

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Dov Levavi	Team: Squad #9	CCRB Case #: 201405284	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 05/17/2014 10:40 PM	Location of Incident: 2491 Arthur Avenue	Precinct: 48	18 Mo. SOL 11/17/2015	EO SOL 11/17/2015	
Date/Time CV Reported Fri, 05/30/2014 1:01 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 05/30/2014 1:01 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Eliezer Pabon	5040	944868	048 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Joffre Cortez	09797	950235	048 PCT
2. POM Kendo Kinsey	12092	938774	032 PCT
3. POM Michael Soto	07250	952259	048 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Eliezer Pabon	Force: Sgt. Eliezer Pabon used physical force against § 87(2)(b)	

Case Summary

On May 30, 2014, § 87(2)(b) Canty, Jr., who did not witness the incident, filed a complaint with the CCRB. On May 17, 2014, at approximately 10:40 p.m., Sgt. Eliezer Pabon and PO Joffre Cortez received a pick-up report of an assault. After canvassing with the victim, Sgt. Pabon and PO Cortez stopped and handcuffed § 87(2)(b)-old § 87(2)(b) and § 87(2)(b)-old § 87(2)(b) who were identified as the perpetrators. While § 87(2)(b) and § 87(2)(b) were handcuffed and facing the window of a hookah shop located at 2491 Arthur Avenue in the Bronx, Sgt. Pabon used force against § 87(2)(b) causing § 87(2)(b)'s head to strike the shop's window and shatter the glass (**Allegation A**). § 87(2)(b) was arrested and charged with § 87(2)(b), § 87(2)(a) 160.50.

This case was included in the CCRB's Sensitive Case List due to media coverage of the incident.

On June 4, 2014, due to a DA investigation into this incident, ADA Osman Abbasi formally requested that this case be placed on DA hold. The case remained on DA hold until November of 2014, when the DA declined criminal jurisdiction. Attempts were then made to contact and obtain a statement from § 87(2)(b) through his mother, § 87(2)(b) and his attorneys. Neither § 87(2)(b) nor the attorneys cooperated with the investigation's attempts to obtain a statement. § 87(2)(g)

§ 87(2)(b) IAB substantiated an allegation of force against Sgt. Pabon and requested charges and specifications.

Mediation, Criminal and Civil Histories

Because of § 87(2)(b)'s arrest and the severity of his injuries, this case was not suitable for mediation.

§ 87(2)(b)'s arrest has been sealed since the incident date. § 87(2)(b)

On § 87(2)(b), a Notice of Claim was filed on behalf of § 87(2)(b) claiming assault and false imprisonment, and seeking 25 million dollars as redress (encl. e48-50).

Civilian and Officer CCRB Histories

This is the first CCRB complaint involving § 87(2)(b) (encl. a2)

Sgt. Pabon has been a member of the NYPD for seven years. He has been the subject of four prior CCRB allegations, two of which alleged excessive force and none of which were substantiated. (encl. a1)

Results of Investigation

Video Footage – IA# 73 (encl. b12)

The video contains a timestamp in the top right corner and begins at 9:40 p.m. (the timestamp on the video was determined to have been one hour off the actual time). The camera faces Fordham Road and shows the sidewalk and a storefront along Arthur Avenue in the Bronx. Two uniformed police officers, identified as Sgt. Eliezer Pabon and PO Joffre Cortez, stand with a young male wearing a blue hooded sweatshirt, identified as § 87(2)(b) on the sidewalk in front of a hookah shop. The shop has large glass windows that face the sidewalk, and the glass front door to the shop is open, slightly blocking the camera's view of the three individuals. PO Cortez appears to frisk § 87(2)(b) who appears to be rear-handcuffed, before standing § 87(2)(b) front-first against the shop's window. At 9:40:41, Sgt. Pabon leaves the frame. § 87(2)(b) who until this point appears calm and compliant, turns his head around toward PO Cortez, prompting PO Cortez to hold § 87(2)(b) against the glass with increased pressure. Sgt. Pabon re-enters the frame at 9:41:01, stands behind PO Cortez, and appears to speak to § 87(2)(b) who continues to turn his head toward the officers while facing the glass and leans back several times against PO Cortez. At 9:42:38, PO Cortez pushes § 87(2)(b) firmly against the glass while § 87(2)(b) continues to turn his head and move around slightly. Sgt. Pabon then talks to an individual on the sidewalk, leaves

the frame and re-enters at 9:45:30. During this time, § 87(2)(b) continues to turn his head around while appearing to speak, and PO Cortez periodically moves him back toward the glass. At 9:45:40, Sgt. Pabon stands several feet behind PO Cortez with what appears to be a radio in his hand. He is faced away from PO Cortez and toward the camera. § 87(2)(b) continues to turn his head toward PO Cortez. Sgt. Pabon moves his radio from his left hand to his right, glances briefly toward § 87(2)(b) and at 9:45:45, turns and walks toward him quickly. Sgt. Pabon extends his left hand toward § 87(2)(b) as he moves toward him. His hand makes contact with the back of § 87(2)(b)'s head and § 87(2)(b)'s head lunges forward against the glass storefront. The glass window immediately shatters as Sgt. Pabon and PO Cortez pull § 87(2)(b) back away from the storefront. PO Cortez appears to hold § 87(2)(b) by his handcuffs or hands and Sgt. Pabon appears to hold onto § 87(2)(b)'s shoulder or the back of his sweatshirt. As PO Cortez backs up, it is revealed that he is also holding onto another rear-handcuffed individual, identified as § 87(2)(b) who until this point had been blocked from view by the open door. § 87(2)(b) also is pulled backward as PO Cortez holds him with one hand. § 87(2)(b) bends forward toward the ground and moves his legs up and down while both officers continue to hold him from behind. Two additional uniformed officers, identified as PO Kendo Kinsey and PO Michael Soto, enter the frame. PO Cortez walks about 15 feet up the block with § 87(2)(b) while PO Kinsey and PO Soto remain with Sgt. Pabon, who maintains his hold on the back of § 87(2)(b)'s head or sweatshirt. Sgt. Pabon brings § 87(2)(b) toward the shop's entrance and out of view of the camera while PO Kinsey enters the shop and returns with a roll of paper towels. At 9:46:30, § 87(2)(b) PO Kinsey and PO Soto are out of the frame while Sgt. Pabon's head remains partially visible. At 9:48:30, Sgt. Pabon approaches PO Cortez. At 9:49:10, PO Kinsey and PO Soto sit § 87(2)(b) down in the store's entryway while Sgt. Pabon returns to them. PO Soto appears to be holding paper towels against § 87(2)(b)'s head. At 9:50:40, an ambulance arrives. Two EMTs, identified as § 87(2)(b) and § 87(2)(b), approach and tend to § 87(2)(b). At 21:52:50, § 87(2)(b) is lifted onto a stretcher before being brought to the ambulance and taken from the scene.

Video Footage – IA# 72 (encl. b13)

This video shows the same events as the video in IA#73, but from a different angle as the camera faces East 189th Street. In the first five minutes of the video, the individuals in front of the store are almost entirely out of frame, although PO Cortez is partially visible in the bottom right corner of the screen. His arm can be seen, as can part of § 87(2)(b)'s body. They are both facing the glass storefront. At 9:40:40 Sgt. Pabon walks up the sidewalk before returning closer toward the camera and PO Cortez appears to tighten his hold on § 87(2)(b). At 9:45:45, the glass window shatters and PO Cortez moves back away from the window with § 87(2)(b). At 21:46:15, Sgt. Pabon and PO Cortez re-enter the frame while holding onto § 87(2)(b) who is bent over and appears to be rear-handcuffed. PO Kinsey walks into the shop, exits with a roll of paper towels, and applies paper towels to § 87(2)(b)'s head. The remainder of the video is consistent with the events visible in the video in IA# 73.

Findings and Recommendations

Allegation A – Force: Sgt. Eliezer Pabon used physical force against § 87(2)(b)

§ 87(2)(b) stated to IAB (encl. c1-2) that after he and § 87(2)(b) were involved in an altercation with another individual and police arrived on scene, they fled before being apprehended by two officers, identified as Sgt. Pabon and PO Cortez. Then, while handcuffed and being held in front of the shop's window by PO Cortez, § 87(2)(b) asked Sgt. Pabon why he was being arrested, turned his body and tried to get away from the window. § 87(2)(b) who is described by IAB as being 5'6" tall and 120 pounds, denied to IAB that he was resisting and stated that he was simply questioning PO Cortez. While § 87(2)(b) stood facing the glass, he argued with Sgt. Pabon, who told him to shut up. Sgt. Pabon then pushed § 87(2)(b)'s head into the glass, causing it to shatter. Shards of glass fell on § 87(2)(b) injuring his chest.

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date